or legal affirmation and is just as much in need of proof before acceptance, or acceptance with the risk of it proving untrue, as any other statement made casually by any person. It requires investigation and independent corroboration, if it is desired to rely on it safely. The form in which the statement is made is a solemn declaration form which follows that set out in the Schedule to the Statutory Declarations Enactment No. 20 Johore Laws, but a vital omission is the words giving the sanction of that Enactment to the declaration, to wit "and by virtue of the Statutory Declarations Enactment". That Enactment lays down that declarations made under its provisions fall within the scope of section 199 P.C.: that is they are an authority to people to accept them as evidence of what they state if the people so wish, but do not bind them so to accept them. Without these sanctioning words the statement made by the appellant, though in form purporting to be one that can be accepted as evidence, is not such a one and the statement, though wilfully false and made for the purpose of fraud, is not criminally punishable.

For these reasons I am of the opinion that the conviction of appellant in this case even though he pleaded guilty cannot stand and the conviction and sentence must be set aside and accused acquitted under the provisions of section 325 Cr. Pro. Code, and I so order.

Conviction and Sentence Set Aside.

SOCKALINGAM CHETTIAR v. CHAN MOI (f).

[Appellate Civil Jurisdiction (Evans, J.) April 11, 1947]

Japanese Judgments and Civil Proceedings Ordinance, 1946 Section 7 — Validity of Letters of Administration granted during Japanese occupation — International Law.

In this case the appellant had sued in the District Court in ejectment claiming to be the landlord of No. 6 Lahat Road, Ipoh, of which the respondent was the tenant. The appellant sued as the administrator of the estate of S.P.S. Sathappa Chettiar (deceased). In the Court below, the respondent pleaded that appellant was not the owner of the premises and that the Letters of Administration cum testamento annexo granted to the appellant in respect of the estate of the original landlord deceased did not empower the appellant to claim under him as they were granted by a Japanese Court. The District Judge found this plea as to the letters of administration being invalid to be good and dismissed the suit.

Held, (1) that as the respondent had paid rent and attorned to the appellant after the grant was made, she was estopped from denying that the appellant was her landlord; (2) that the grant of letters of administration by the Japanese Court seemed to be an act carried on in accordance with the principles of International Law and was therefore good and valid, subject to any steps being taken to have it set aside; (3) that the Japanese Judgments and Civil Proceedings Ordinance, 1946 does not invalidate all Japanese decrees in legal proceedings.

Cases referred to :—

(1) *Jew v. Wood*, 3 Beav. 579.

(2) *Sutton v. London Chatham, and Dover Company*, 12 T.L.R. 425.

CIVIL APPEAL FROM DISTRICT JUDGE.

M. S. Mahendran for the Appellant.

Chin Swee Onn for the Respondent.

Evans, J. : —This appeal raises points of some novelty and interest. The appellant was the plaintiff in the District Court where he sued in ejectment claiming to be landlord of No. 6 Lahat Road Ipoh of which the respondent is now the tenant. The appellant twice obtained permission from the local Rent Board to bring proceedings for ejectment. The second was granted on 27th November 1946 and thereon notices were given determining the tenancy on 31st December 1946. The appellant then sued for ejectment.

In the court below the respondent pleaded that the appellant is not the owner of the premises; he made some plea as to the "capacity" in which the plaintiff obtained his permission which was wisely dropped; and went on to plead that Letters of Administration *cum testamento annexo* granted to the appellant in respect of the estate of the original landlord deceased did not empower the appellant to claim under him as they were granted by a Japanese Court. He later filed, apparently without any leave, what is described as an amended Statement of Defence which in fact purports to add a plea that the Rent Board had acted *ultra vires*.

The District Judge seems to have found the plea as to the Letters of Administration being invalid for the plaintiff's purpose good. He dismissed the suit therefor and this point alone was argued in front of me. It was however not disputed that the tenant had paid rent and attorned to the appellant after the grant was made, and continued to pay rent to him, and, it seems, even tendered rent after the determination of the tenancy. The first plea is in fact bad, as it does not matter whether the appellant is owner or not. The question is whether he is the respondent's landlord, and, on the above facts, that would seem a fact she is estopped from denying. If appellant was landlord for the purpose of giving a good receipt for rent, he was landlord for all others.

This point was put to appellant's Counsel who then referred to Section 116 of the Evidence Enactment but did not take the matter much further. The respondent argued that she was tenant of the estate. The estate however is not a person. Section 116 sets

out in general terms the English rule but after the manner of a Code does not in any way define the limits of its application. The only case I know which would seem against its application here is *Jew v. Wood*[1] which has been cited as excepting from the general rule cases where the plaintiff claims under a deceased landlord. It does not in my opinion make any so wide an exception. In that case the landlord's title was impugned primarily by a third party, and when action had been brought and the tenant was threatened. The question was whether he could interplead. Here the respondent attorned with the full knowledge of the facts, she herself pleads the Letters of Administration and makes no claim to pay rent to anyone else. I see no reason why in this case the general rule should not apply. Although I should have thought this point concluded the whole dispute, it has not been argued fully before me, nor the cases discussed.

Before me appellant argued on the effect of Ordinance 29/46 on which the learned District Judge based his Judgment, holding that Section 7 applied to the Letters of Administration produced in court, and rendered them invalid to prove that the appellant is the lawful administrator of the property the subject matter of the suit.

The beneficial owner of this property died testate before the war. Probate was granted to his executor who later left this country leaving a Power of Attorney to act for him. That Power of Attorney expired during the Japanese occupation and the then Public Trustee gave the attorney notice to surrender administration. The appellant, the son of the executor, then applied for and received a grant of Letters of Administration *cum testamento annexo* from the Court then exercising jurisdiction. Those Letters were produced in this case.

The appellant contended that Section 5 of the Ordinance does not apply to landlord and tenant, because where that relation exists it can have no bearing. The grounds of this contention are not clear but Counsel may have in mind the reasons which are the basis for the estoppel. Finally, he argued that in Section 7 the words "or otherwise" must be construed as being *ejusdem generis* as those preceding it, and that in effect the section applied to a defendant only.

The respondent argued that Section 5 was compulsory; and that the words "or otherwise" in Section 7 were to be interpreted as including all other ways in which they could be pleaded and relied on, *Sutton v. London Chatham, and Dover Railway Company*[2].

Mr. Mahendran spoke of considering the scheme of the enactment but before that could be done, there are other steps preliminary thereto. We must first consider what the law was before the Ordinance was enacted and what point or evil the Ordinance was intended to remedy. We may then know what the legislator was attempting to do. The scheme of the remedy might then be considered to determine the meaning of any words which are otherwise ambiguous.

The circumstances of this case, if unusual, are not unprecedented. Territories have not infrequently in various parts of the world fallen under enemy occupation during war. The rights and duties of such occupants and the legal effect of their acts have had to be considered. They have, to some extent, been the subject of international agreement, and may be ascertained from the practice of civilised nations. Military occupation does not affect the sovereignty over the territory and the existing laws and rights of the inhabitants continue in force subject to the overriding requirements of the maintenance and safety of the invader's army, the pursuance of his military operations and the purposes of the war including, it is conceived, any political obligations contingent thereto. Article 23 (b) of the regulations of the Hague Convention, which embodies the admitted practices of the nations, forbids a belligerent "to declare abolished, suspended, or inadmissible the right of the subjects of the hostile party to institute legal proceedings". How these obligations are understood by His Majesty's Government may be found in Article 368 of its "Laws and Usages of War on Land": —

> The ordinary courts of justice and the laws they administer should be suspended only when the refusal of the judges, and magistrates to act, or the behaviour of the inhabitants makes it necessary. In such case the occupant must establish courts of his own, and make this measure known to the inhabitants.

The general practice has been stated by *Mr. Hall*, International Law, 5th Edition, p. 476 :—

> It has been seen that the authority of the local civil and judicial administration is suspended as of course so soon as occupation takes place. It is not usual however for an invader to take the whole administration into his own hands. Partly because it is more easy to preserve order through the agency of the native functionaries, partly because they are more competent to deal with the laws which remain in force, he generally keeps in their posts such of the judicial and of the inferior administrative officers as are willing to serve under him, subjecting them only to supervision on the part of the military authorities, or of superior civil authorities appointed by him.

He may suspend the judges as well as other officials and, if he does so, should appoint others in their place.

The effect of juridical acts, whether at law or between parties, done subject to the observance of the principles referred to above may have to be considered not only by belligerents after hostilities have come to an end, but also by neutrals during their continuance. The effect accorded them is described by *Hall* as follows :—

> Thus judicial acts done under (the control of the occupant), when they are not of a political complexion, administrative acts so done, to the extent that they take effect during the continuance of his control, and the various acts done during the same time by private persons under the sanction of municipal law, remain good. Were it otherwise, the whole social life of a community would be paralysed by an invasion (that is, occupation); and as between the state and individuals the evil would be scarcely less, — it would be hard for example that payment of taxes made under duress should be ignored, and it would be contrary to the general interest that sentences passed upon criminals should be annulled by the disappearance of the intrusive government.

This is quoted approvingly by *Sir Arnold McNair*, who goes on to express the opinion :—

> Thus we apprehend that if the enemy were to occupy the Scilly Isles (we refrain from instancing the Channel Islands because they have their own legal system), all the ordinary transactions of private law taking place in accordance with existing English law during the enemy administration, such as contracts, dispositions of movables and immovables, devolution of property by will or upon intestacy, and all normal official transactions such as the collection of ordinary taxes, would, at the end of the occupation, be treated as valid, and all judgments, civil and criminal, given in accordance with the English law or with such regulations as the enemy was lawfully entitled to prescribe, would be respected. [Legal Effects of War p. 337.]

Such acts may fall to be considered in Court, to be construed and their effect upon the rights and duties of the parties to be determined. The power of the Court to consider and to give effect to them, does not depend on any statutory permission.

When the Japanese forces occupied this country the Judges did not remain at their Courts. In the light of the invaders' conduct, it may be doubted whether their doing so, would have availed to afford the inhabitants access to their accustomed courts. The occupying forces purported to establish courts by Ordinance and Enactment. The former seems to have been of general application to the occupied territories, the latter which is earlier in date, to have been intended for and applied to Perak. The Ordinance does little more than give Japanese names to the courts. It speaks of a Highest Court which might be the Court of Appeal, but a temporary prohibition of appeals from the High Court was in fact perpetual. This court seems never to have sat and may be ignored. The Ordinance provides that "the organisation of the courts, the limits of their jurisdiction and matters relating to civil and criminal procedure shall, subject to any provision in this Ordinance and in the Maintenance of Public Peace and Order Ordinance, be governed by the laws hitherto in force subject always to the paramount interests of the military administration". The Enactment sets out the Courts of the State of Perak with English titles corresponding to the preceding courts. The only material variation is the requirement of the Court to sit in banco for certain crimes. This again was a dead letter and does not concern the grant of probate. This law also provides "Save as hereinbefore provided the provisions of the law relating to the constitution of the Courts in the State of Perak which was in force on the 6th December 2601 shall be operative". The law which they were to enforce remained the same, subject to certain modifications which may or may not fall within the limits set out, but which do not affect this case, as all probate jurisdiction was exercised strictly in accordance with the Enactment alone.

Turning to the process issued in this matter one may judge the effect of all this. It issues in the name of the State of Perak. Sovereignty is unaffected by invasion and the fact that the sovereignty in this country is divided does not seem to vary that consequence. The State of Perak is known whether as an unfederated, or federated or united state. The paramount sovereignty of the British Crown was then unenforceable and had formerly never been referred to in the process. It goes on "In the Supreme Court, The Court of a Civil Judge," all terms of the F. M. S. Legislation with the addition of the word 'civil' taken from the above Enactment. It is all in the English language and the usual form except for the date, and purports to continue proceedings initiated by a Petition of 1935.

The grant of these Letters of Administration seems to me to be an act carried out in accordance with the principles of international law and to be good and valid, subject to any steps being taken to have it set aside. This is moreover the view on which this Court has consistently acted and Letters of Administration granted during the occupation have been considered and set aside before this Ordinance was a bill or before it was enacted; and an appointment of a receiver was treated as valid and subsisting before it came into force. Those orders were, I think, rightly treated as subsisting orders. Such orders are not even orders of a foreign court, they were made here, in accordance with the local law, and are in the records of this Court.

The validity and invalidity of these acts, the grounds on which they may be set aside do not depend

therefore on this Ordinance which merely affirms in general the existing law and provides a mode of procedure.

So understood Sections 3 and 4 affirm the law. The former is inconsistent with any suggestion that such decrees are inherently bad and there would be no need to set them aside. It would be equally inconsistent if such decrees could not be pleaded or relied on, as here, for such suits are the test of their validity. Section 5 does import something new. A court regarding an act as valid would not substitute its own for it. The word "may" is used in both sub-sections (1) and (4). The language is permissive, as to both the applicant and the court, and there is nothing to suggest that compliance is sanctioned by invalidity in default. Section 7 does profess to limit the validity of such acts. As it clearly affects and abridges existing rights it must be strictly construed if necessary. The words however appear to me to be clear; it reads "No Japanese decree shall be pleaded by way of counterclaim or set off or otherwise etc". A plaintiff avers and "pleaded", though more widely used, is in its exact meaning applied to the defence. The legislator goes on to specify "counterclaim" and "set off" not strictly pleas but fresh matters imported by the defence. Then come the words "or otherwise". It is one of the best established rules of interpretation that where particular words are followed by general words these must be construed ejusdem generis with those preceding. This rule seems clearly to apply here. Nothing but matters of defence are mentioned, and they are set out in terms of art.

The case on which the respondent relied does not apply. There the court was construing a contract. The general words were the same as here but were preceded by one word only, and were clearly used in extension of it. It was sought to read into the contract the regulations of the Railway Company which certainly supported the wider construction. The Court said it was unnecessary as the contract was sufficiently clear. It was clear that the railway would wish to limit their liability for delay and the words were adequate to express that intention. Here it is a question of the extent to which the legislator intends to abridge existing rights. Why decrees should not be available in defence I don't know, but I am equally ignorant of why they should not be used as the appellant seeks to use his here. The words seem to me perfectly clear and susceptible of only one interpretation. In my opinion the learned District Judge was wrong in holding that the Ordinance invalidates all Japanese decrees in legal proceedings. Had that been the purpose one would have expected it to be put in the forefront of the enactment.

I therefore think that the judgment given must be reversed, and that the appellant is entitled to the order for which he asks, with mesne profits and costs of the hearing and appeal.

Appeal Allowed.

SINGAPORE REPORTS.

VEERASAMY KRISHNASAMY AND ANOR. v. JANNAKI AMMAL.

[Original Civil Juris. (Brown, J.) February 13, 1947]

Will — Construction — Failure of objects of devise — Cyprés doctrine — Position of Trustees who are also beneficiaries.

This was an Originating Summons for the determination of two questions arising out of clause 8 of the Will of Narainasamy Veerasamy (deceased). Clause 8 of the Will was as follows:—"I give devise and bequeath unto my trustees all my land and house situate at Bedok Road, Singapore, in trust to hold and manage the same for the period of twenty-one years after the death of the survivor of my sons, Rajagopal, Krishnasamy, Sobrielo and my grandson, Ramakrishna, and during such period to permit the same to be used as a family burial ground for myself and such members of my family as my trustees shall think fit and during the said period I direct my trustees to collect the rents and profits of the said land and house and out of such rents and profits to pay the assessment and quit rent (if any) and repairs to the said house and to pay the balance (if any) to my sons in equal share".

The application for a burial ground licence was refused by the Colonial Secretary. The questions for the determination for the Court were (i) whether the object of the devise contained in Clause 8 have failed by reason of that refusal and the consequent impossibility of carrying out the trust to permit the land to be used as a burial ground or whether the trust can be saved by the application in some form of the cypres doctrine and (ii) whether the trust for the burial having failed the land and house fell into residue.

Held, (1) that the cypres doctrine will only be applicable if a general charitable intention is disclosed and that as the trust in the present case was not a charitable trust, no cypres scheme can be permitted and applied to save the trust; (2) that the trust having failed the land and house fall into the residue.

Observations on the position of the Trustees who are also beneficiaries.

Cases referred to :—

(1) *Re White's Trusts*, 33 Ch. D. 449.
(2) *Cheang Tew Muey and Others v. Cheang Cheow Lian Neo and Others* (1930) S.S.L.R. 58.
(3) *Commissioners for Special Purposes of Income Tax v. Pemsel* (1891) A.C. 583.
(4) *Saunders v. Vautier*, 41 E.R. 482.
(5) *Gosling v. Gosling*, 70 E.R. 423.
(6) *Wharton v. Masterman* (1895) A.C. 186.